

REMARKS

The above-identified application has been considered in view of the Final Office Action that was mailed on February 13, 2008 and the Advisory Action that was mailed on May 21, 2008. Claims 1, 4-6, 10-11, and 21-35 are currently pending. Claims 1 and 27-28 have been amended herein, and new claims 29-35 have been added for consideration. Applicant respectfully submits that these amendments incorporate no new matter, are fully supported by the specification, and are allowable over the references of record. In view of these amendments and the following remarks and arguments, Applicant respectfully requests allowance of claims 1, 4-6, 10-11, and 21-35.

In the Final Office Action, claims 1, 4-6, 10-11, and 28 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,439,467 to Benderev *et al.* (hereinafter “Benderev”) in view of U.S. Patent No. 4,635,637 to Schreiber (hereinafter “Schreiber”) and U.S. Patent No. 3,842,824 to Neufeld (hereinafter “Neufeld”). The Examiner acknowledged that the combination of Benderev and Schreiber fails to disclose a handle that is removably attachable to a proximal end of a template, and relied upon Neufeld for disclosure of that concept.

In the Amendment dated April 10, 2008 submitted in response to the Final Office Action, Applicant drew the Examiner’s attention to the fact that the breaking tool described in Neufeld is simply “slipped over” the rear end of a pin extending from a patient’s tissue, and thus, that the breaking tool “merely receives the pin 10 and is never connected thereto.”

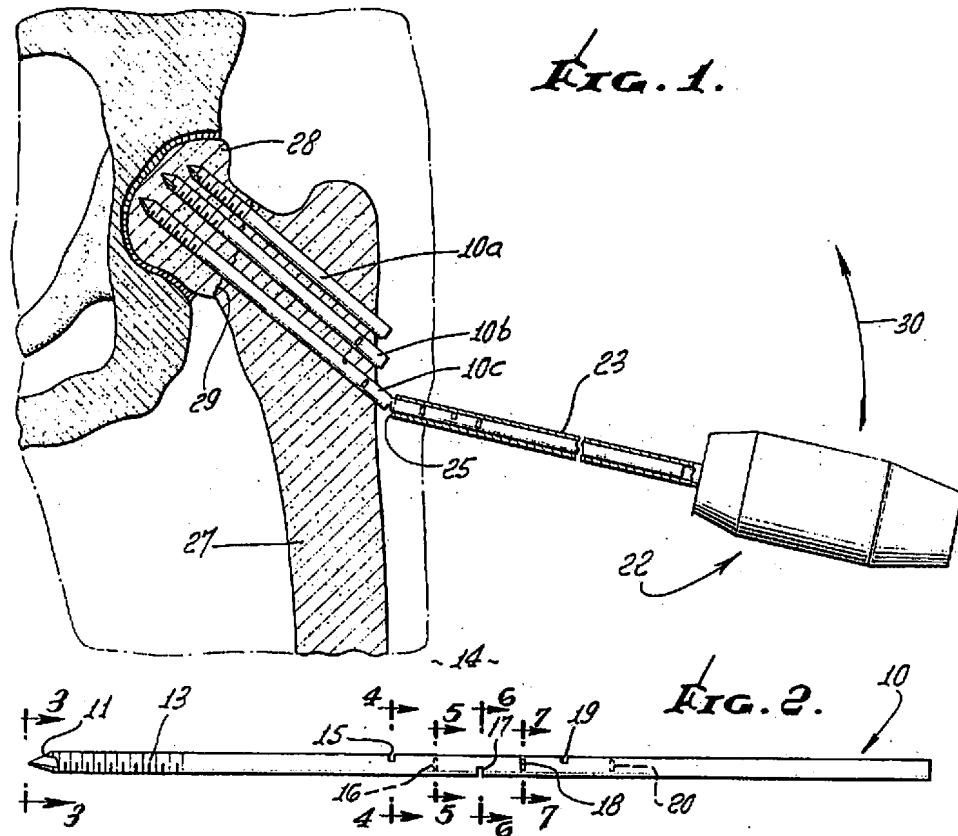
However, in the Advisory Action, the Examiner stated that breaking tool is still configured to “selectively receive” the pin and that the breaking tool and the pin are “releasably engagable.”

While Applicant maintains that the breaking tool of Neufeld does not disclose or suggest “a handle having receiving structure formed at a distal end thereof corresponding in configuration to the attachment structure of the at least one template” wherein the receiving structure is “configured to selectively receive the attachment structure in a snap-fit arrangement such that the at least one template is releasably engagable with the handle” as recited in independent claims 1 and 28, in the interest of advancing prosecution, Applicant has amended the language of independent claims 1 and 28 to more specifically define the recited engagement of the handle and the at least template. In particular, Applicant has amended independent claims 1 and 28 to recite that the receiving structure is “configured to selectively receive the attachment structure in snap-fit arrangement.”

According to § 2143 of the MPEP, to reject a claim under 35 U.S.C. § 103, the Examiner must show that the cited reference(s) disclose each element of the claim.

As previously stated, Neufeld relates to surgical pins and the implantation thereof. With reference to FIGS. 1-2 of Neufeld below, the disclosed surgical pin 10 includes an intermediate portion 14 having a series of weakened portions or notches 15-20 formed along its length. (See col. 2, lines 41-43). During use, the breaking tool 22 is employed to fracture the pin 10 at one of

the selected notches. (See col. 2, lines 65-66). The breaking tool 22 includes a rigid tube 23 having one end that is secured to a handle 24 and another end that is configured and dimensioned to receive the pin 10. (See col. 2, lines 66 – col. 3, line 5). The bore 26 of the tube 23 is larger than the diameter of pin 10 such that the tool 22 may be easily slipped over the rear end of the pin, (see col. 3, lines 2-4), as acknowledged by the Examiner in the Advisory Action.



Accordingly, Applicant respectfully submits that the breaking tool 22 merely receives the pin 10 and is never connected thereto, and therefore, that the Neufeld fails to disclose at least one template "including attachment structure formed at a proximal end thereof" and "a handle having receiving structure formed at a distal end thereof corresponding in configuration to the

attachment structure of the at least one template" wherein the receiving structure is "configured to selectively receive the attachment structure in a snap-fit arrangement such that the at least one template is releasably engagable with the handle."

Even if the Examiner's argument advanced in the Advisory Action characterizing the breaking tool 22 and the pin 10 as "releasably engagable" is accepted as accurate, *arguendo*, in view of the disclosure in Neufeld that that the bore 26 of the tube 23 is large enough to merely slip the breaking tool 22 over the rear end of the pin 10, (see col. 3, lines 2-4), Applicant respectfully submits that the association of the breaking tool 22 and the pin 10 cannot properly be described as a "snap-fit arrangement," as recited in amended independent claims 1 and 28.

For at least these reasons, *inter alia*, Applicant respectfully submits that the combination of Benderev with Schreiber and Neufeld fails to suggest each and every element recited in independent claims 1 and 28, and therefore, that independent claims 1 and 28 are allowable under 35 U.S.C. § 103(a) over Benderev in view of Schreiber and Neufeld. As claims 4-6 and 10-11 depend either directly or indirectly from amended independent claim 1 and include each element recited therein, for at least the reasons that amended independent claim 1 is allowable over Benderev in view of Schreiber and Neufeld under 35 U.S.C. §103(a), *inter alia*, Applicant respectfully submits that claims 4-6 and 10-11 are also allowable over Benderev in view of Schreiber and Neufeld under 35 U.S.C. §103(a).

In the Final Office Action, claims 21-27 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Benderev in view of Schreiber and Neufeld and further in view of U.S. Patent No. 5,501,692 to Riza. The Examiner acknowledged that the combination of Benderev, Schreiber, and Neufeld fails to suggest structures in the handle for attachment to the template including a bore, groove, or lock rod, as well as the configured depths, and relied on Riza for the disclosure of these concepts.

As previously discussed, amended independent claim 1 is allowable over Benderev in view of Schreiber and Neufeld. Even if it is assumed, *arguendo*, that the characterization of Riza proffered by the Examiner is accurate, including the structures purportedly disclosed therein would fail to cure the deficiencies in the combination of Benderev, Schreiber, and Neufeld discussed above.

Accordingly, and for at least this reason, *inter alia*, Applicant respectfully submits that Benderev in view of Schreiber, Neufeld, and Riza fails to suggest each and every element recited in amended independent claim 1, and therefore, that amended independent claim 1 is allowable over Benderev in view of Schreiber, Neufeld, and Riza under 35 U.S.C. § 103(a). As claims 21-27 depend either directly or indirectly from amended independent claim 1 and include each element recited therein, for at least the reasons that amended independent claim 1 is allowable over Benderev in view of Schreiber, Neufeld, and Riza under 35 U.S.C. § 103(a), *inter alia*, Applicant respectfully submits that claims 21-27 are also allowable over Benderev in view of Schreiber, Neufeld, and Riza under 35 U.S.C. § 103(a).

Applicant has added new claims 29-35 for consideration herein. As discussed above, amended independent claim 1 is allowable. Given the indirect dependence of claim 29 therefrom, for at least the reasons set forth above regarding the allowability of amended independent claim 1, *inter alia*, Applicant respectfully submits that claim 29 is also allowable.

Additionally, with respect to new claims 30-35, while the Examiner has relied upon Benderev for the disclosure of a kit including an instrument usable in repairing a meniscal tear, Benderev describes only a single instrument. Accordingly, any kit purportedly disclosed by Benderev would include one or more of the same instrument, whereas new independent claim 30 recites an instrument kit that includes, *inter alia*, “a first template including a first elongate body with a first proximal end, the first elongate body defining a substantially linear configuration along an entire length thereof,” “a second template including a second elongate body with a second proximal end, the second template including a distal end portion curving in a first direction to define a first arc”, and “a third template including a third elongate body having a third proximal end, the third template including a distal end portion curving in a second direction to define a second arc, wherein the second direction is different than the first direction.” Combining Benderev with any of the other references of record would fail to cure this deficiency.

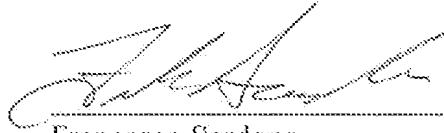
For at least this reason, *inter alia*, Applicant respectfully submits that the references of record, taken either alone or in any proper combination, fail to disclose or suggest each and every element recited in new independent claim 30, and therefore, that new independent claim 30 is

allowable over the references of record. As new claims 31-35 depend either directly or indirectly from new independent claim 30 and include each element recited therein, for at least the reasons that new independent claim 30 is allowable over the references of record, *inter alia*, Applicant respectfully submits that new claims 31-35 are also allowable over the reference of record.

In view of the amendments made herein and the foregoing remarks and arguments, Applicant respectfully requests allowance of claims 1, 4-6, 10-11, and 21-35.

Should the Examiner believe that a telephone interview may facilitate prosecution of the above-identified application, the Examiner is respectfully requested to telephone Applicant's undersigned representative at the number indicated below.

Respectfully submitted,



Francesco Sardone
Reg. No. 47,918
Attorney for Applicant

CARTER, DELUCA, FARRELL, & SCHMIDT, LLP
445 Broad Hollow Road, Suite 225
Melville, New York 11747
Phone: (631) 501-5700
Fax: (631) 501-3526

Correspondence address:

Chief Patent Counsel
COVIDIEN
60 Middletown Avenue
North Haven, Connecticut 06473